

to this Information, are copies of letters dated April 12, 2000, September 25, 2007, and October 3, 2007, that Rocca sent to the LRFA. Also included in Exhibit # 3 is a copy of the letter that the LRFA wrote in response to Rocca's letter.

Robert Bonadeo

- 5.37. Robert Bonadeo (Bonadeo) is the Executive Vice President and General Counsel of Halton Forming. Bonadeo attended a LRFA General meeting on October 3, 2011. In the parking lot, immediately following the meeting, Bonadeo made notes of the meeting which he provided to the Bureau.
- 5.38. I regard Bonadeo to be a reliable and credible source of information and I believe the information that he has provided to the Bureau to be true. As an officer of Halton Forming, he was also under the obligations of the Immunity Program to provide full, complete, frank and truthful disclosure. In addition, as a member of the Law Society of Upper Canada Bonadeo is under an obligation to act with integrity and to not bring the legal profession into disrepute.

Internet Databases

- 5.39. Where information is stated in this Information to have been received by me or other representatives of the Commissioner from the records of public bodies, corporations or private businesses, I truly believe such information in each and every case because of the manner in which the information is generated and the purposes for which it is retained – in the sense that it is created by people paid for accuracy and it is intended to be used by the same bodies that created it or to be relied upon by others. I and other representatives of the Commissioner have found these to be credible sources for business information.
- 5.40. During the course of my investigation of the Conspiracy and for the purpose of preparing this Information, I and other representatives of the Commissioner have consulted the records of the following sources:
- (a) Ontario Business Information System: This is an electronic database maintained by the Government of Ontario of all companies registered within the Province of Ontario, as controlled by the Ministry of Consumer and Business Services. Information provided by this system includes business names and addresses, dates of incorporation, dates of dissolution, registration numbers, names and addresses of business officials, business ownership and status.
 - (b) OneSource Information Services, Inc.: Recognized as a leader in business information solutions for more than 20 years, this company delivers company, executive and industry intelligence. The main types of business information provided by it include industry market research, company information, executive listings, credit and financial data, intellectual technology profiles and news. It

selects the best content providers, collects all relevant information, and blends and normalizes many data streams into one consistent, consumable asset. It also takes many steps to optimize information quality and usability with advanced automated processes and expert editorial oversight.

Visual Surveillance

- 5.41. Where reference is made in this Information to surveillance in respect of Camp Forming, Mur-Wall, Orta Forming and the LRFA, unless stated that I have made the observation personally, the information is derived from my having read, or being advised of, the contents of the surveillance reports prepared by the representatives of the Commissioner involved in the said surveillance activity (the “**Surveillance Officers**”). I believe the information contained within these reports in each and every case to be true, because the persons giving, receiving and/or relaying the information were acting in execution of their duties as Surveillance Officers at the relevant time and, as such, were under a legal and moral obligation to be accurate and to relate only the truth in relation to the events observed by them, insofar as it was possible for them to do so.
- 5.42. Surveillance was conducted by Stephan Luciw and Dejana Milinkov. Their observations were written contemporaneously in a Bureau notebook.
- 5.43. I have read, or been advised of, all of the surveillance conducted within this investigation and, for the reasons given in paragraph 5.41 of this Information, I believe that the information I have received reflects accurate accounts of the Surveillance Officers’ observations.

PARTIES TO BE SEARCHED

- 5.44. Based on a review of information obtained from the Ontario Business Information System and OneSource Information Services, Inc., I believe on reasonable grounds that the following corporate information is true and accurate:

Camp Forming Ltd.

- 5.45. Camp Forming is a company incorporated under the laws of Ontario on February 24, 1976. Camp Forming’s registered office is located at 105 Rivalda Road, Toronto, Ontario, M9M 2M6 and its mailing address is 1111 Finch Avenue West, Suite 305, Toronto, Ontario, M3J 2E5. When surveillance was conducted, it was noted that Camp Forming had relocated. It now carries on business at 150 Creditstone Road, Vaughan, Ontario, Canada, L4K 1N5 instead of 105 Rivalda Road, Toronto, Ontario, M9M 2M6. In addition, the mailing address noted above is a chartered accountant’s office.

Mur-Wall Forming Inc. and 1012488 Ontario Limited doing business as Mur-Wall Concrete Forming

- 5.46. Mur-Wall Forming Inc. and 1012488 Ontario Limited are companies incorporated under the laws of Ontario. Mur-Wall Forming Inc. was incorporated on February 13, 1987. 1012488 Ontario Limited was incorporated on December 21, 1992 and the name Mur-Wall Concrete Forming was registered to that business on February 24, 1999. The registered office for Mur-Wall Forming Inc. is 50 Pippin Road, Suite #61, Concord, Ontario, Canada, L4K 4M4 and the registered office for 1012488 is 50 Pippin Road, Unit 61, Concord, Ontario, Canada, L4K 4M4. Mur-Wall carries on business at 50 Pippin Road, Suite / Unit 61, Concord, Ontario, Canada, L4K 4M4.

Orta Forming & Construction Ltd.

- 5.47. Orta Forming is a company incorporated under the laws of Ontario on February 26, 1986. Orta Forming's registered office is located at 180 Regina Road, Woodbridge, Ontario, L4L 8L6. It carries on business at 180 Regina Road, Woodbridge, Ontario, L4L 8L6.

The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity

- 5.48. The LRFA is an accredited employer organization incorporated under the laws of Ontario of February 15, 1978. The LRFA's head office is located at 4550 Highway 7 West, Suite 235, Woodbridge, Ontario, L4L 4Y7. It carries on business at 4550 Highway 7 West, Suite 235, Woodbridge, Ontario, L4L 4Y7.

GROUND TO BELIEVE THAT OFFENCES HAVE BEEN COMMITTED

- 5.49. In addition to my own actions, observations and personal knowledge, this Information is based on information and records received or obtained from representatives of the Commissioner, Lou Rocca, Robert Bonadeo and Internet websites. The reliability of these sources of information is detailed in paragraphs 5.21 to 5.43 above.
- 5.50. On the basis of this information, I have reasonable grounds to believe, and do believe, that the LRFA, Camp Forming, Mur-Wall, Orta Forming, and others known and unknown, have engaged in conduct in violation of the Former and Current Conspiracy Provision (section 45) of the Act.

Former Conspiracy Provision (Section 45)

5.51. There are two constituent elements to the former section 45 of the Act, namely:

- (a) the existence of an agreement or arrangement; and
- (b) an undue lessening of competition or an unreasonable enhancement of prices resulting from the agreement or arrangement.

Evidence of Agreement and Anti-Competitive Conduct

Parties to the Agreement

5.52. Rocca informed me and I verily believe that the individuals listed below served on the LRFA Board of Directors (the “Directors”). Unless otherwise noted, these members were Directors from 1997 until March 11, 2010:

- Louis Viola (Mur-Wall)
- Joe Spagnolo (Orta Forming)
- Frank Campoli (Camp Forming)
- Mark Teskey (Teskey)
- Pat Lamanna (Canadian Concrete)
- Renato Minuti (Formcrete) – until 2007
- Gabriella Brockie (Formcrete) – from 2008
- John Pastorek (Erindale)
- Vince Scioli (Greenwall)
- Manuel Fiuza (MCF Forming)
- Lee Rocca (Lee Rocca Forming) – until 2006
- Phil DiMeo (Lee Rocca Forming) - from 2007
- Helio Dias (Solid Wall)

- 5.53. Rocca informed me and I verily believe that Alleged Co-Conspirators reached agreements with respect to prices and Builder allocation.
- 5.54. Rocca informed me and I verily believe that the key orchestrators of the agreements initiated and implemented by the LRFA were: Frank Campoli of Camp Forming, Louis Viola of Mur-Wall and Joe Spagnolo of Orta Forming.
- 5.55. Rocca informed me and I verily believe that Mark Teskey of Teskey, Pat Lamanna of Canadian Concrete, Renato Minuti of Formcrete and John Pastorek of Erindale were proponents of the agreements but were not key orchestrators.
- 5.56. Rocca informed me and I verily believe Vince Scioli of Greenwall, Manuel Fiuza of MCF Forming, and Lee Rocca of Lee Rocca Forming, consistently abided by the agreements.

Agreement to Fix Prices:

5.57. Rocca informed me and I verily believe that:

- (a) On Tuesday April 15, 1997 he was appointed to the Board of Directors ("the Board") of the LRFA. Attached as Exhibit # 5 to this Information is a copy of the Minutes from the Board of Directors meeting of April 15, 1997. Rocca remained a Director until September 2010.
- (b) During the period that Rocca was on the Board, he recalls numerous discussions among the Directors related to the price of low rise Concrete Forming. In the spring of each year, between February and April, a price for the upcoming construction season was discussed and agreed to by the Directors ("Spring Meeting").
- (c) In 1997-1998 these discussions related to pricing, were verbal, and a price was ultimately agreed to by the Directors.
- (d) The LRFA required its members to use a standard contract which specified the obligations and terms and conditions of the relationship between the Contractor and the Builders ("Standard Contract").
- (e) The Standard Contract contains a page which is to be filled in by the Contractor that lists what will be charged if extra work is required beyond what was initially specified for the project such as an additional or higher wall ("extras page").
- (f) Beginning in 1999-2000 the Board used the extras page taken from the Standard Contract as the basis for its discussions related to price.

- (g) In particular, at the Spring Meeting an extras page with the dollar figure filled in, was distributed to the Board by the Executive Committee. The Executive Committee consisted of the President, Vice President, Secretary, Treasurer and the Past President of the LRFA.
- (h) The price per cubic metre for an extra wall was the new price for the upcoming season being proposed by the Executive Committee to the Board. This figure was discussed among the Board and the base price Contractors were supposed to quote was agreed upon for the upcoming season.
- (i) As all contracts are quoted to the Builders per linear foot, it was a simple calculation to convert the agreed upon cubic metre price to a price per linear foot. This was the base price that Contractors were supposed to quote.
- (j) After the price had been agreed upon, the LRFA Manager, Harold Piccininni, would collect all the copies of the extras page.
- (k) The last meeting that Rocca attended where the Standard Contract was used as the basis for discussing prices was in 2009.
- (l) Attached as Exhibit # 6 to this Information is a copy of a blank Standard Contract with the extras page (at page 2) filled in, that Rocca took from one of these Spring Meetings. The hand-written calculations on Exhibit # 6 were made by Rocca at a Bureau interview to explain the formula that converted the price per cubic metre to a price per linear foot.
- (m) Attached as Exhibit # 7 to this Information is a copy of the minutes of the Board of Directors Meeting on November 28, 2000, which refers to a discussion about the Standard Contract. As the minutes reflect, Rocca did not attend this meeting. He advises that a reference to a Standard Contract in the meeting minutes was code for "setting our price".
- (n) Rocca never agreed to, and consistently quoted lower than, the prices set by the LRFA Board members.

Agreement Not to Compete

5.58. Rocca informed me and I verily believe that:

- (a) Contractors generally have Builders which they regularly contract with and work for.
- (b) There was an understanding or agreement among the Alleged Co-conspirators and/or their competitors that work would be allocated based on the past relationships

Contractors had with the Builders. Members of the LRFA were not to compete for long standing customers (Builders) of other members.

- (c) During a conversation between Frank Campoli of Camp Forming and Renato Minuti of Formcrete, Campoli told Minuti to “send me your quote and I will submit mine”. This type of conversation was a common occurrence at LRFA Board meetings.
- (d) As a result, Contractors called each other when a Builder solicited a quote. The understanding was that if a Contractor received such a request from a Builder who had a long standing working relationship with another LRFA member (the “incumbent”), the non-incumbent Contractor would call the incumbent member to learn what price the incumbent had quoted and to quote a higher price.
- (e) Rocca did not agree to the allocation of Builders and consistently competed for jobs from Builders that had been allocated to other LRFA members.
- (f) Until October 3, 2011, the Article on Professional Conduct in the LRFA Constitution and By-laws (“Code of Ethics”) specified at (v) that “No Member shall accept a new contract without establishing who the last member company was and respectfully contacting them.” Attached as Exhibit # 8 to this Information is a copy of the LRFA Code of Ethics.

5.59. Attached as Exhibit # 9 to this Information is a copy of the notes Bonadeo made immediately following a General Meeting that he attended on October 3, 2011. The notes describe the following:

- (a) When requirement (v) of the Code of Ethics was discussed, Irv Tepper of Conbora Forming Limited, branded it as “ridiculous”, saying “I’m negotiating a new contract and just before I sign I have to go – oh wait a second who was your last contractor, I have to go back to the cartel and ask permission.”
- (b) Louis Viola drew the analogy of a member, Lee Rocca Forming Ltd., always working for the Builder Greenpark and always winning the Greenpark business and that other members were “not going to bid Greenpark just to disrupt Lee’s pricing.”

5.60. Rocca informed me and I verily believe that:

- (a) The alleged agreements to fix prices and not to compete for Builders was facilitated by organized conventions, paid for by the LRFA.
- (b) Attached as Exhibit # 10 to this Information is a copy of the minutes of the Board of Directors and General meeting of June 3, 1997, at which the upcoming convention in November was discussed and approved. Rocca advised me that when he questioned the convention at this Board Meeting, then Vice President of the LRFA, Louis Viola of Mur-Wall, told him that the purpose of the conventions was so that the members would become friends and become comfortable with one another to

pick up the phone to discuss prices and to discuss the allocation of Builders when doing business.

- (c) Attached as Exhibit # 11 to this Information is a copy of the minutes of the Board of Directors meeting of March 16, 2000, at which the Board approved adding a second convention open to spouses and families. Rocca advised me that Louis Viola, then President of the LRFA, said that this was necessary so everyone would feel comfortable with each other so they could discuss pricing and who got what jobs.
- (d) Attached as Exhibit # 12 to this Information is a copy of the minutes of the Board of Directors meeting of August 16, 2006, at which a Ladies Day to be paid for by the LRFA was approved by the Board. Rocca advised me that he requested that the LRFA refund Halton Forming for this. Mark Teskey, then Secretary of the LRFA told Rocca that the purpose of the Ladies Day was for the wives to fraternize and become friends so when it came to business they would encourage their husbands to "play like good little boys." Rocca believes this to mean that the husbands would abide by the agreements to charge the agreed-upon prices and to respect the allocation of Builders and not to compete away Builders from other members.
- (e) Rocca attended one convention in October, 2000 in Las Vegas. No official industry or LRFA business was discussed.
- (f) Rocca proposed to the Board that members not going on these conventions be compensated. Rocca was told the purpose of these conventions was for the members to become friends and there would be no compensation for not going because anyone not going on the conventions was not doing their duty.

5.61. Rocca informed me and I verily believe that references were made to the alleged agreements to fix prices and not to compete for Builders during conversations between and among Board members.

- (a) Attached as Exhibit # 11 to this Information is copy of the minutes of the Board of Directors meeting of March 16, 2000, at which the Board proposed and passed a requirement that every Contractor post a \$100,000 bond or be in violation of the collective agreement. Rocca opposed the bond. Attached as Exhibit # 2 is a copy of a letter dated April 12, 2000, that Rocca sent to the Board indicating his opposition. At this time, Halton Forming had begun to subcontract to unionized pieceworkers. Rocca advised me that at the meeting, Frank Campoli of Camp Forming, another Director of the LRFA, told Rocca that if Halton Forming had adhered to the agreed upon prices, the LRFA would not have to eliminate the ability to subcontract through the requirement of posting a bond.
- (b) Attached as Exhibit # 13 to this Information is a copy of the minutes of the Board of Directors meeting of March 27, 2002, at which the Board approved that the \$100,000 bond be replaced by a \$100,000 letter of credit. Attached as Exhibit # 14 to this Information is a copy of the minutes of the Board of Directors meeting of

July 16, 2002, where five (5) months later, it was proposed that the LRFA recommend to Local 183 that any Contractor not posting the letter of credit be grieved, including two Board members, Frank Campoli of Camp Forming and Joe Spagnolo of Orta Forming, who were not in compliance. Rocca advised me that Campoli and Spagnolo argued that they should not have to post the letter of credit as it was for those the Board wanted to keep out. Rocca advised me at the July 16, 2002 meeting, Joe Spagnolo told Rocca that "there are still too many of your small guys, your prices are too low and if you just stick to the LRFA prices as we asked you to, the LRFA would not have to do any of this stuff."

- (c) Attached as Exhibit # 15 to this Information is a copy of the minutes of the Board of Directors meeting of May 21, 2003, which indicates that the agenda item "Investigation (Underpricing)" had been deferred. Rocca advises me that he believes that the item was deferred because he was not in attendance at this meeting. Following the Board Meeting, on June 10, 2003, Rocca met with Louis Viola of Mur-Wall, then Past President of the LRFA. At this meeting Viola told Rocca that the LRFA had made it hard on Rocca because Rocca was not observing the LRFA price and he wasn't respecting the LRFA Builder allocation. Viola told Rocca, to either conform to the LRFA way or the Board was going to introduce a clause in the collective agreement to eliminate all unionized subcontracting. However, if Rocca agreed to raise his prices 10% to 15%, Rocca could keep the Builders he had at that time.

- 5.62. Based on the evidence outlined above, I have reasonable grounds to believe, and do believe, that the LRFA, Camp Forming, Mur-wall, Orta Forming, and others known and unknown, agreed to fix the price of Concrete Forming each year for the upcoming construction season at the Board of Directors Meetings from at least April 15, 1997 until 2009.
- 5.63. I also have reasonable grounds to believe, and do believe, that the LRFA, Camp Forming, Mur-wall, Orta Forming, and others known and unknown, agreed to allocate Builders and not to compete among themselves for other members' Builders from at least April 15, 1997 until March 11, 2010.

Undue Lessening of Competition

- 5.64. Rocca informed me and I verily believe that there are a number of clauses contained in the collective agreement that place requirements on Contractors.
 - (a) Attached as Exhibit # 11 to this Information is a copy of the minutes of the Board of Directors meeting of March 16, 2000, at which the Board proposed and passed a requirement that every Contractor post a \$100,000 bond or be in violation of the collective agreement. Also at this March 16, 2000, Board Meeting a restriction on subcontracting was discussed.

- (b) Attached as Exhibit # 16 to this Information is a copy of the Letter of Understanding of May 4, 2000, between Local 183 and the LRFA that adds the requirement that any Contractors operating under the collective agreement post a \$100,000 bond.
- (c) Attached as Exhibits # 17 and # 18 to this Information are copies of two Letters of Understanding of May 4, 2000 between Local 183 and the LRFA. Exhibit # 17 altered clause 14.01 of the collective agreement that allowed subcontracting of unionized employees so that all subcontracting would be banned. Exhibit # 18 clarified that the ban on subcontracting did not apply to "traditional subcontracting". Traditional subcontracting could be used in situations when a Contractor was experiencing a temporary shortage of crews for a short period of time.
- (d) Attached as Exhibit # 13 to this Information is a copy of the minutes of the Board of Directors meeting of March 27, 2002, at which it was proposed and approved that the \$100,000 bond be replaced by a \$100,000 letter of credit.
- (e) Attached as Exhibit # 19 to this Information is a copy of the amended 2001- 2004 Collective Agreement, which requires, at page 26, any employer to post a \$100,000 letter of credit.
- (f) Attached as Exhibit # 20 to this Information is a copy of the Letter of Understanding of September 9, 2004, between Local 183 and the LRFA. Exhibit # 20 deleted the former Letter of Understanding allowing "traditional subcontracting".

5.65. Rocca informed me and I verily believe:

- (a) That the requirement to post a \$100,000 bond made it difficult for small Contractors to operate as subcontractors. This made it difficult for Halton Forming to employ subcontractors to compete against the LRFA members abiding by the alleged agreements.
- (b) That a letter of credit is more difficult to obtain than a bond. This further increased the difficulty for small Contractors to operate as subcontractors because it severely restricted their borrowing capacity. It also made it more difficult for Halton Forming to employ subcontractors to compete against the higher priced LRFA members abiding by the agreements.
- (c) Throughout Rocca's time on the Board, he opposed the inclusion of the provisions outlined above. Attached as Exhibits # 2, # 3 and # 4 are copies of three letters dated April 12, 2000, September 25, 2007, and October 3, 2007, that Rocca sent to the LRFA expressing his opinions.

- 5.66. The operations of the LRFA, including the LRFA conventions, are financed out of the industry fund which is enshrined in the collective agreement. Contractors are assessed a fee per hour worked which is remitted to Local 183 that in turn remits it to the LRFA. The industry fund remittances have increased from \$0.30 per labour hour worked in 1997 to \$1.55 per labour hour worked in 2010. Rocca informed me and I verily believe that the industry fund places a significant financial burden on small Contractors restricting their ability to effectively compete. Attached as Exhibits # 21 and # 22 are copies of pages relating to the industry fund remittance from the 1998 and the 2010 collective agreements.
- 5.67. Rocca informed me and I verily believe that at least twenty-two (22) small and medium sized Contractors left the Concrete Forming industry after the introduction of these clauses into the collective agreement.
- 5.68. Rocca further informs me and I verily believe that as a result of the prohibition on subcontracting, Halton Forming lost close to 50% of its sales and its market share fell to below 20% owing to its inability to subcontract to unionized pieceworkers. This lost business was taken up by other Contractors at higher prices.
- 5.69. Rocca further informed me and I verily believe that at several Board meetings, Louis Viola of Mur-Wall indicated that the companies around the table represented 90% of the Concrete Forming industry and that if everyone at the table went along with the pricing discussed, they didn't need to care about the other 10%. With Halton Forming's decline in business, Rocca estimates that, based on 2009 production, the Board of Directors and their respective companies abiding by the alleged agreements, now control upwards of 73% of the Concrete Forming market in Toronto and vicinity.
- 5.70. Based on the evidence outlined above, I have reasonable grounds to believe, and do believe, that the Alleged Co-conspirators to the agreements have sufficient market power as result of their combined market shares, such that any agreements to fix prices or allocate Builders would adversely affect competition across the entire Concrete Forming market.
- 5.71. Based on the evidence outlined above, I have reasonable grounds to believe, and do believe, that the provisions in the collective agreement between the LRFA and Local 183 requiring the posting of a \$100,000 bond, then a \$100,000 letter of credit, and the ban on the use of subcontractors and pieceworkers and the industry fund, restricted entry of small and medium sized Contractors. This restricted firms like Halton Forming from expanding and effectively competing against the LRFA members and from offering a price competitive alternative in the Concrete Forming market.
- 5.72. Based on the evidence outlined above, I have reasonable grounds to believe, and do believe, that the LRFA, Camp Forming, Mur-wall, Orta Forming, Frank Campoli, Louis Viola, Joe Spagnolo and others known and unknown entered into agreements to fix prices and allocate Builders that have unduly lessened competition in the Concrete Forming

market in Toronto and vicinity contrary to the Former Conspiracy Provision of the Act (s.45(1)(c)).

5.73. As noted above in paragraph 2.13, there is an exemption that applies to employer associations engaged in the collective bargaining process. These agreements outlined above were never part of any collective bargaining process, therefore, I believe that these agreements do not fall within the exemption.

Current Conspiracy Provision (Section 45)

5.74. There are three constituent elements to current section 45 of the Act, namely:

- (a) the existence of an agreement or arrangement;
- (b) the persons who are party to the agreement or arrangement are competitors; and
- (c) the agreement or arrangement either (i) fixes, maintains, increases or controls the price of a product, (ii) allocates sales, territories, customers or markets for the production or supply of a product, or (iii) fixes, maintains, controls, prevents, lessens or eliminates the production or supply of a product.

Evidence of Agreement and Anti-Competitive Conduct

Parties to the Agreement

5.75. Rocca informed me and I verily believe that the individuals listed below served on the LRFA Board of Directors. Unless otherwise noted, these members were directors from March 12, 2010 and continue to serve on the LRFA Board:

- Louis Viola (Mur-Wall)
- Joe Spagnolo (Orta Forming)
- Frank Campoli (Camp Forming)
- Mark Teskey (Teskey)
- Pat Lamanna (Canadian Concrete)
- Gabriella Brockie (Formcrete)

- John Pastorek (Erindale)
- Vince Scioli (Greenwall)
- Manuel Fiuza (MCF Forming)
- Phil DiMeo (Lee Rocca Forming)
- Helio Dias (Solid Wall) – until July 28, 2010.

- 5.76. Rocca informed me and I verily believe that Alleged Co-Conspirators reached agreements with respect to Builder allocation.
- 5.77. Rocca informed me and I verily believe that the key orchestrators of the agreements initiated and implemented by the LRFA were: Frank Campoli of Camp Forming, Louis Viola of Mur-Wall and Joe Spagnolo of Orta Forming.
- 5.78. Rocca informed me and I verily believe that Mark Teskey of Teskey, Pat Lamanna of Canadian Concrete, and John Pastorek of Erindale were proponents of the agreements but were not key orchestrators.
- 5.79. Rocca informed me and I verily believe Vince Scioli of Greenwall, Manuel Fiuza of MCF Forming consistently abided by the agreements.
- 5.80. Rocca informed me and I verily believe that the Alleged Co-conspirators reached the agreement outlined below under the auspices of the LRFA Board of Directors meetings.

Competitors

- 5.81. The LRFA Constitution and By-laws state that “membership in the association shall be open to any person, partnership or corporation engaged in concrete forming projects relating to low rise residential construction”.
- 5.82. All of the Alleged Co-conspirators are members of the LRFA, and therefore, are considered competitors under s.45(8) of the Act.

Agreement Not to Compete

- 5.83. Rocca informed me and I verily believe that:

(a) Contractors generally have Builders which they regularly contract with and work for.

- (b) There was an understanding or agreement among the Alleged Co-conspirator and/or their competitors that work would be allocated based on the past relationships Contractors had with the Builders. Members of the LRFA were not to compete for long standing customers (Builders) of other members.
 - (c) During a conversation between Frank Campoli of Camp Forming and Renato Minuti of Formcrete, Campoli told Minuti to “send me your quote and I will submit mine”. This type of conversation was a common occurrence at LRFA Board meetings.
 - (d) As a result, Contractors called each other when a Builder solicited a quote. The understanding was that if a Contractor received such a request from a Builder who had a long standing working relationship with another LRFA member (the “incumbent”), the non-incumbent Contractor would call the incumbent member to learn what price the incumbent had quoted and to quote a higher price.
 - (e) Rocca did not agree to the allocation of Builders and consistently competed for jobs from Builders that had been allocated to other LRFA members.
- 5.84. Bonadeo informed me and I verily believe that at the October 3, 2011 General Meeting, amendments to the LRFA Constitution and By-laws (including the Code of Ethics) was discussed.
- 5.85. Attached as Exhibit # 9 to this Information is a copy of the notes Bonadeo made immediately following the meeting. The notes describe the following:
- (a) An attendee, Irv Tepper of Conbora Forming Limited, referred to the requirements of the Code of Ethics as “being anticompetitive”, to which Joe Spagnolo of Orta Forming responded, “and they should be – we have to control this.”
 - (b) When requirement (v) of the Code of Ethics, which specifies that “No member shall accept a new contract without establishing who the last member company was and respectfully contacting them”, was discussed, Irv Tepper branded it as “ridiculous”, saying “I’m negotiating a new contract and just before I sign I have to go – oh wait a second who was your last contractor, I have to go back to the cartel and ask permission.”
 - (c) Louis Viola drew the analogy of a member, Lee Rocca Forming Ltd., always working for the Builder Greenpark and always winning the Greenpark business and that other members were “not going to bid Greenpark just to disrupt Lee’s pricing.”
 - (d) Joe Spagnolo responded to this discussion, saying “the problem is these things shouldn’t be in writing – it should just be an agreement between all of us.”
- 5.86. Attached as Exhibit # 23 to this Information is a copy of the minutes of the General Meeting of October 3, 2011, at which the membership voted to remove requirement (v) of the Code of Ethics.

- 5.87. Based on the evidence outlined above, I have reasonable grounds to believe, and do believe, that Camp Forming, Mur-Wall, Orta Forming, Frank Campoli, Louis Viola, Joe Spagnolo and others known and unknown are competitors and continued to adhere to the agreement to allocate Builders and not to compete from March 12, 2010 until at least October 3, 2011 contrary to the Current Conspiracy Provision (s.45(1)(b)) of the Act. In particular, based on what Louis Viola said about not bidding for jobs from Greenpark in order to not disturb Lee Rocca's pricing, I believe this indicates that the alleged agreement to allocate Builders was still in existence at the time of this meeting.
- 5.88. The information noted above demonstrates that, through the Code of Ethics, in particular requirement (v), the LRFA facilitated the alleged Builder allocation agreement reached among Camp Forming, Mur-Wall, Orta Forming, Frank Campoli, Louis Viola, Joe Spagnolo and others known and unknown until it was removed at the October 3, 2011 meeting. As a consequence, the LRFA is considered to have aided and abetted or, alternatively, to have counselled the alleged agreement among Camp Forming, Mur-Wall, Orta Forming, Frank Campoli, Louis Viola, Joe Spagnolo and others known and unknown within the meaning of section 21 or section 22 of the *Criminal Code*.

GROUND TO BELIEVE THAT THINGS TO BE SEARCHED FOR ARE AT THE PREMISES TO BE SEARCHED

- 5.89. Based on my experience described in paragraph 1.4 of this Information, including my experience dealing with business records as a Competition Law Officer, I believe that the records or other things to be searched for and described in paragraphs 3.2 to 3.6 above are the kinds of records that:
- (a) would have been created by the persons or entities listed in paragraphs 2 and 5 of this Information;
 - (b) would exist and would be found on the premises identified in paragraph 4 of this Information; and
 - (c) will afford evidence with respect to the commission of the alleged offences set out in paragraphs 2.1 to 2.3 of this Information.
- 5.90. Steps have been taken to determine the address and location of the business premises of Camp Forming, Mur-Wall, Orta Forming and the LRFA. These steps have included consulting corporate records as well as conducting surveillance of the premises to be searched.

Camp Forming

- 5.91. On March 2, 2012, Officer Luciw and Officer Milinkov visited 105 Rivalda Road, Toronto, Ontario. They noted that the sign had been removed from the front of the building and the building looked empty. After speaking to a person in the area, Officer Luciw learned that Camp Forming had just recently relocated to Creditstone Road. Officer Luciw called the phone number for Camp Forming and was informed that their new location was at 150 Creditstone Road.
- 5.92. Officer Luciw and Officer Milinkov visited 150 Creditstone Road, Vaughan, Ontario. They took pictures and made notes in respect of the following:

Camp Forming is located in a building that is two stories on one side and is connected to a one story building on the other side. There is a sign on the front lawn. The top of the sign is for Camp Forming, and the bottom part of the sign has the name Active Contracting and Excavating.

The one story building appears to be the offices. There is a gated area at the back with a video camera on the side of the building. There is a loading dock in front of the building close to the main doors which are located in the front part of the building. There is a large yard at the back and a loading area. There is both a front and side parking lots.

- 5.93. On March 16, 2012, Officer Luciw and Officer Milinkov visited 150 Creditstone Road, Vaughan, Ontario and confirmed to me that Camp Forming is still located at the premises to be searched. Officer Luciw further informed me that he observed that on the main floor, there was a reception and four to five offices.
- 5.94. On March 16, 2012, Officer Luciw and Officer Milinkov visited 1111 Finch Avenue West, Suite 305, Toronto, Ontario. Officer Luciw and Officer Milinkov confirmed that there is an office of a chartered accountant located at this address.

Mur-Wall

- 5.95. On March 2, 2012, Officer Luciw and Officer Milinkov visited 50 Pippin Road in Concord, Ontario. They took pictures of the building and made notes in respect of the following:

Mur-Wall is located in a low rise multi-building complex. Upon entering the complex, building 50 is located at the rear. It is a low rise brown building. Mur-Wall appears to be in units 61, 62, 63 and 64. Unit 62 appears to be the office portion. There is a back loading dock behind the building. There are

two (2) loading docks at the back and two (2) exit doors from units 61 and 62 in the rear. There also appears to be a side exit door from unit 61. Unit 63 and 64 appear to be part of Mur-Wall and these units may contain storage.

On March 16, 2012, Officer Luciw entered the offices of Mur-Wall at 50 Pippin Road. Officer Luciw observed 2-3 offices on the main floor.

- 5.96. On March 16, 2012, Officer Luciw and Officer Milinkov visited 50 Pippin Road in Concord, Ontario and confirmed to me that Mur-Wall is still located at the premises to be searched.

Orta Forming

- 5.97. On March 2, 2012, Officer Luciw and Officer Milinkov visited 180 Regina Road, Woodbridge, Ontario. They took pictures of the building and made notes in respect of the following:

Orta Forming is located in a two story brown building. There are gates to the entrance which is surrounded with barbed wire. It appears as though there is a garage at the back and the offices appear to be in the front of the building. There are multiple exits and loading docks located around the building and the main entrance appears to be at the front of the building. There was a sign on the door for Orta Forming. There appears to be a security box to open the gate when the gate was closed, however, the gate was open at the time.

- 5.98. On March 16, 2012, Officer Luciw and Officer Milinkov visited 180 Regina Road, Woodbridge, Ontario and confirmed to me that Orta Forming is still located at the premises to be searched. Officer Luciw observed four windows on the main floor and four windows on the second floor with two corner offices on each floor.

LRFA

- 5.99. On March 2, 2012, Officer Luciw and Officer Milinkov visited 4550 Highway 7, Woodbridge, Ontario. They took pictures of the building and made notes in respect of the following:

LRFA is located in a building complex. Upon entering on the north side of Highway 7, building 4550 is directly to the right upon entrance into the parking lot. It is a two story brick building. There is a directory for Complex B - 4550 at the main entrance that indicates that the LRFA is located in suite 235 on the second floor. There is a sign for the LRFA outside the door for suite 235.

- 5.100. On March 16, 2012, Officer Luciw and Officer Milinkov visited 4550 Highway 7, Woodbridge, Ontario and confirmed to me that LRFA is still located at the premises to be searched. Officer Luciw informs me that he entered the offices of the LRFA and observed a reception desk and two to three offices and a board room.
- 5.101. The information gathered by Officer Luciw and Officer Milinkov provides grounds to believe that the above-noted addresses for the business premises of Camp Forming, Mur-Wall, Orta Forming and the LRFA are correct.

GROUND'S FOR BELIEVING IN THE NECESSITY OF PROVISION FOR SEARCHING COMPUTER SYSTEMS

- 5.102. Based on my experience described in paragraph 1.4 of this Information, I have observed that, in the normal conduct of business, companies use computer systems for their day to day operations. I believe that some of the records to be searched for described above in paragraphs 3.2 to 3.5 of this Information will be found in the form of data suitable for use in a computer system.
- 5.103. I have been informed by Bonadeo that the LRFA communicates with its members by email. I have seen an email with minutes from a general meeting attached that were sent from the LRFA to its members on October 14, 2011.
- 5.104. Forensic practices and procedures are used when conducting searches for data. The Bureau has electronic evidence officers trained to conduct searches of computer systems, data storage devices and media pursuant to sections 15 and 16 of the Act.
- 5.105. Clifford Smith, an electronic evidence officer trained to examine and seize electronic evidence, informed me on March 19, 2012, and I believe that:
- (a) Data is stored in a variety of different formats, some of which are not readily accessible without the specific software and/or hardware on which the data was created.
 - (b) Data may be recovered months or even years after it has been created, deleted, copied to a data storage device or media, or viewed via the Internet.
 - (c) Data may be stored on data storage devices. Some of these are as small as postage stamps. The devices may hold large volumes of data and are used in office environments as removable storage for data, such as digital cameras, USB (universal serial bus) devices, cell phones, personal digital assistants ("PDAs"), flash drives and smart cards.

- (d) Many operating systems and computer programs create temporary files containing records, such as a history of web sites visited, files printed or fax transmissions, in order to facilitate efficient operation of these operating systems and computer programs. This may result in the creation of data without user knowledge or intervention.
 - (e) Traces of transient, erased or deleted data persist on computer systems, data storage devices or some media until the space that was allocated to such data is re-used.
 - (f) The use of hardware security devices, passwords, log-on codes and encryption keys is increasing and can substantially impede or, in some cases, prevent the search and seizure of records or other things that are contained in a computer system, computer program, data storage device or media.
- 5.106. In this case, I request authorization to access, search, examine, copy and seize data that may be found on computer systems, data storage devices or media. I also request authorization to seize the computer system, data storage device or media that may contain data, if it is necessary to examine and/or extract relevant data off-site.
- 5.107. Clifford Smith, an electronic evidence officer, has conducted searches of computer systems, data storage devices and media, and is familiar with forensic practices and procedures that may be required to search data contained in or available to computer systems, data storage devices and media.
- 5.108. The information which Clifford Smith has provided to me is as follows:
- (a) It is not possible to determine, in advance, which practices and procedures may be required to access, search, examine, copy and extract data or used to acquire the substance or meaning of data.
 - (b) The electronic evidence officers authorized to execute the warrant, listed in paragraph 6.2 of this Information, will use forensic practices and procedures for acquiring electronic evidence, while attempting to minimize the impact on business functions. The following practices and procedures may be used as circumstances dictate:
 - (i) search the computer system, data storage device or media and produce an image to examine and extract relevant data off-site;
 - (ii) search the computer system, data storage device or media and reproduce an electronic copy of relevant data on-site;
 - (iii) search the computer system, data storage device or media and print or cause to be printed a copy of relevant data on-site; or

- (iv) seize the computer system, data storage device or media and remove it or them from the premises, to examine and extract relevant data off-site.

Some of these practices and procedures, specifically the steps described above in subparagraphs 5.108(b)(i) and 5.108(b)(iv) of this Information, may result in the seizure of data that is not relevant. Electronic evidence officers or anyone under their direction will take steps to ensure that data seized, which is believed to be irrelevant, will not be accessible to anyone else, with the exception of data that falls within the provisions of section 489 of the *Criminal Code*.

The following procedure will be followed to prevent data that is believed to be irrelevant from becoming part of the investigative file:

- (v) Where electronic evidence officers consider it necessary to produce an image of a computer system, data storage device or media found on the premises, and in order to examine and extract relevant data off-site (as described above in subparagraph 5.108(b)(i)),
- a true copy and a working copy of the seized image will be made, in addition to the copy that will be provided to the party from whom it was seized;
 - the seized image and the true copy will be sealed to protect the integrity of the data;
 - the working copy will be examined and data believed to be relevant will be extracted and provided to the officers assigned to the case;
 - electronic evidence officers or anyone under their direction will keep confidential all data or information found within the working copy that is believed to be irrelevant, with the exception of data that falls within the provisions of section 489 of the *Criminal Code*;
 - access to the working copy will remain under the control of electronic evidence officers; and
 - further extraction of data from the working copy will be confined to data believed to be relevant, or as required within proceedings that may arise from the search or investigation.
- (vi) A similar process will be followed where a person authorized to execute the warrant considers it necessary to seize a computer system, data storage device or media from the premises (as described above in subparagraph 5.108 (b)(iv)). In such a case:

- the computer system, data storage device or media will be transferred to an electronic evidence officer, who may produce an image or extract relevant data; and
 - further handling will be as described above.
- (c) It may be necessary to use, cause to be used and/or seize any computer system, data storage device, media, computer programs or associated documentation, including operating instructions, manuals and service records, present on the premises.
- (d) It may be necessary to use and/or cause to be used any computer system, data storage device, media or computer program brought onto the premises by the persons authorized to execute the warrant.
- (e) The persons authorized to execute the warrant will require any person who is in possession or control of the premises, including a computer system administrator or other custodian of information relating to the computer system, to permit any person named in the warrant to use or cause to be used any computer system or part thereof on the premises by making accessible all data contained in any computer system, computer program, data storage devices or media for the purposes of searching or seizing such data.
- (f) The electronic evidence officers may find encrypted, security protected or other data from which they cannot acquire the substance or meaning of at the premises, requiring seizure or reproducing of such data for further off-site examination; this may result in the seizure of data not relevant to the warrant.
- (g) It may be necessary to employ, retain, direct or engage other persons to assist in the search of the said premises, including the services of computer consultants or diagnosticians, which persons would, in the presence of persons authorized in the warrant, attend at the premises and perform such tasks as may assist the persons authorized in the warrant to carry out their functions thereunder.

COMPUTER SYSTEMS AUTHORIZATIONS

5.109. I request authorization for the persons named in paragraph 6.2 of this Information, who have been trained to search and seize data from computer systems, data storage devices and media, and persons under their direction, to do what has been described in the above paragraph.